TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

9

No. 444

WILBUR C. KING, JERRY W. CARTER AND RICHARD A. MACK, AS AND CONSTITUTING THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

FILED NOVEMBER 23, 1951

Probable Jurisdiction Noted January 2, 1952

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, TALLAHASSEE DIVISION

Civil Action File No. 292

WILBUR C. KING, JERRY W. CARTER and RICHARD A. MACK, as and constituting the Florida Railroad and Public Utilities Commission, Plaintiffs,

vs.

THE UNITED STATES OF AMERICA, Defendant

COMPLAINT—Filed September 16, 1950

Jurisdictional Allegations

1. This action is one to temporarily restrain, temporarily and permanently enjoin, and set aside and annul an order of the Interstate Commerce Commission, as hereinafter more fully appears. The action is brought under the provisions of Title 28, United States Code, Sections 1336, 2321, 2322, 2323, 2324, 2325 and 2284.

Parties

2. The aforesaid Wilbur C. King, Jerry W. Carter and Richard A. Mack are the duly elected, qualified and acting commissioners of the Florida Railroad and Public Utilities Commission and as such constitute said Commission.

3. The Florida Railroad and Public Utilities Commission, herein sometimes called the Florida Commission, is an agency of the State of Florida and a branch of the governmental authority of said State and is specifically charged under the laws of Florida with the duty of making reasonable and just intrastate rates of freight and passenger tariffs to be observed by the railroads, railroad companies and [fol. 2] common carriers doing business in the State of Florida over their respective lines.

4. The principal office of plaintiffs is in Tallahassee, Florida, the capital of the State of Florida, and in the judicial district and division aforesaid.

5. The United States of America is made defendant herein in accordance with the provisions of Title 28, United States Code, Section 2322.

Interstate Commerce Commission

6. The Interstate Commerce Commission is a commission and agency of the government of the United States of America, created by Act of Congress, February 4, 1887, and the powers and duties of said Commission are defined in the Interstate Commerce Act, as amended, Title 28, United States Code, Sections 1 to 27, inclusive.

Purpose of Action

7. The purpose of this action is to restrain and enjoin the operation and enforcement of, and set aside and annul a Report decided May 4, 1950 and a Final Order dated July 25, 1950 of the Interstate Commerce Commission in a proceeding before that Commission entitled "Increases in Florida Intrastate Rates", under I. C. C. Docket No. 30140, affecting intrastate freight rates and charges in the State of Florida. Said Report was made a part of said Final Order and copies of said Report and Order are attached to and made a part of this complaint as Exhibits A and B, respectively.

Record in I. C. C. Docket No. 30140

8. Accompanying this complaint and by reference made a part hereof are duly certified copies of those parts of the record of the aforesaid proceeding before the Interstate Commerce Commission, material to a determination of the [fol. 3] issues presented by this action, described as follows:

(a) Petition on behalf of Railroads operating in the State of Florida, dated December 3, 1948;

(b) Order of Investigation, dated January 5, 1949;

(c) Transcript of Hearing (complete transcript);

(d) Exhibits 1 to — (all exhibits);

(e) Report of Interstate Commerce Commission, decided May 4, 1950;

(f) Petition for Rehearing of Florida Commission, dated June 19, 1950;

(g) Order of Interstate Commerce Commission denying petition for rehearing, dated July 25, 1950;

(h) Final Order of Interstate Commerce Commission, dated July 25, 1950.

Said parts of said proceeding will be referred to hereinafter collectively as the Record.

Related Proceedings Before Interstate Commerce Commission

9. On December 5, 1946 the Interstate Commerce Commission issued its final order in a proceeding before that Commission entitled "Increased Railway Rates, Fares and Charges, 1946" under I. C. C. Docket Ex Parte 162, 266 I. C. C. 537, and thereby authorized, insofar as we are concerned here, an increase in interstate rail carrier basic rates and charges with certain specified exceptions.

10. On July 27, 1948 the Interstate Commerce Commission issued its final order in a proceeding before that Commission entitled "Increased Freight Rates, 1947" under I. C. C. Docket Parte 166, 270 I. C. C. 403, and thereby authorized, insofar as we are concerned here, an increase of 25 per cent in interstate rail carrier freight rates and charges with certain exceptions.

[fol. 4] Proceedings Before the Florida Commission

11. Certain of the railroads operating in the State of Florida, by various petitions to the Florida Commission, requested said Commission to authorize general increases in the intrastate rates and charges of said railroads in the State of Florida corresponding to the increases in interstate rates and charges which are applicable to rail transportation to, from and between points in the State of Florida as authorized by the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166 as aforesaid. Said petitions were considered by the Florida Commission in two of its dockets and were disposed of by said Commission in a series of orders.

12. In Docket No. 1538 of the Florida Commission the

petitioning railroads operating in Florida requested authority to increase their intrastate freight rates and charges and their intrastate passenger fares in amounts corresponding with such increases as were authorized in I. C. C. Docket Ex Parte 162.

12.1. On March 11, 1947, after hearing, the Florida Commission entered its Order No. 1443 in its Docket No. 1538 and thereby granted the full increases requested by said railroads except that no increases were allowed on (a) logs moving to the mills, (b) wet phosphate rock moving from the washer to the drying plant, (c) wastewoods, such as stumps, knots and limbs, moving to the retorts or recovery plants, and (d) sugar cane moving to the mills. Also, increases on pulpwood were limited to 9 per cent on the Ex Parte 123 rates. All of such exceptions were on raw materials moving to processing plants. The full increases were allowed on the outbound finished products. A copy of this order appears as Appendix 2 to the Petition on behalf of the railroads in the Record accompanying this complaint.

[fol. 5] 12.2 In said Order No. 1443 the Florida Commission included in its findings, among others, that the basic freight rates and charges increased or continued in effect by said order to the extent therein found and approved in detail would be just and reasonable, but that the full amount of the increases in the form proposed in the petition of the railroads had not been shown to be just and reasonable in respects not therein approved.

13. In Docket No. 1574 of the Florida Commission the petitioning railroads operating in Florida sought general intrastate increases similar to the increases approved in I. C. C. Docket Ex Parte 166.

13.1 On April 9, 1948, after hearing, the Florida Commission entered its Order No. 1466(A) in its Docket No. 1574 and thereby granted the full 20 per cent increases in effect at that time under orders of the Interstate Commerce Commission in its Docket Ex Parte 166, with the following exceptions: (a) No increases were allowed on protective services; (b) No increases were allowed on wastewoods, stumps, limbs, branches, etc., to Pensacola, Florida; (c) No increases were allowed on sugar cane from the fields to the mill at Clewiston; (d) No increases were allowed on fertilizer and fertilizer materials; (e) Increases

on road aggregates were limited to ten per cent; and (f) Increases on class rates and rates made in relation thereto were limited to 10.25 per cent. A copy of Order No. 1466(A) appears as Exhibit No. 164 of the Record accompanying this complaint.

13.2 In its Order No. 1466(A) the Florida Commission found, among other things, that in order to provide an adequate and efficient transportation system to meet the needs of commerce and in order that said railroads be able to meet increased wages, the additional payroll taxes incident thereto and increased cost of materials and supplies, increases in the basic intrastate freight rates and charges [fol. 6] of said railroads with certain exceptions, should be authorized; that except as otherwise specifically provided all basic intrastate freight rates and charges of said railroads should be increased as aforesaid and when so increased said rates and charges would not be in excess of a just and reasonable basis; and that said increases would have the effect of materially increasing the revenues of said railroads for the purposes aforesaid.

14. On November 13, 1948 the Florida Commission issued its Order No. 1466(C) in Docket No. 1574 and continued until July 1, 1949 the increases granted in Order No. 1466(A) with the same exceptions described above. A copy of Order No. 1466(C) appears as Appendix 3 to the Petition on behalf of the railroads in the Record accompanying this complaint. By subsequent orders of the Florida Commission said increases and exceptions were continued in effect until the further order of said Commission.

15. By the aforesaid orders of the Florida Commission the railroads operating in Florida have been granted by the Florida Commission on their intrastate traffic in Florida, and are presently applying on such traffic, the same increases in freight rates and charges and passenger fares as were authorized by the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166, with the exception of the last 5 per cent granted by the Interstate Commerce Commission in its final order in Ex Parte 166 and the commodity and class rates above described.

The Proceeding in I.C.C. Docket No. 30140

16. On December 3, 1948 eight of the fourteen railroads operating in Florida, namely: Atlanta and Saint Andrews Bay Railway Company; Atlantic Coast Line Railroad Company; Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees); Georgia and Florida Railroad Company (W. V. Griffin and H. W. Purvis, Trus-[fol. 7] tees); Georgia Southern and Florida Railway Company; Louisville and Nashville Railroad Company; St. Louis-San Francisco Railway Company and Seaboard Air Line Railroad Company, filed with the Interstate Commerce Commission their "Petition on behalf of the Railroads Operating in the State of Florida", hereinafter called the railroads, and therein alleged that as a result of the refusal of the Florida Commission to grant the same increases in their intrastate rates and charges as the Interstate Commerce Commission granted in its Dockets Ex Parte 162 and 166 as aforesaid, the rates and charges which the railroads are required to maintain for intrastate application in Florida cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce; and that by reason of the application of said intrastate rates and charges the railroads are being deprived of a large amount of revenue to which they are entitled and which it is necessary for them to have in order to furnish adequate and efficient transportation service and that such loss in revenue results in an undue burden upon and a discrimination against interstate commerce and undue preference of intrastate commerce, in violation of the Interstate Commerce Act, as amended, and particularly Sections 13 and 15a thereof; Title 28, United States Code, Sections 13 and 15a. The prayer of said Petition is that the Interstate Commerce Commission institute an investigation and remove the alleged violations and prescribe rates and charges for the transportation of freight moving in intrastate commerce within the State of Florida which shall carry increases in the same measure and to the same degree as authorized by said Commission in its Dockets Ex Parte 162 and 166.

A certified copy of said Petition is a part of the Record accompanying this complaint.

[fol. 8] 16. On January 5, 1949 the Interstate Commerce Commission entered its Order of Investigation and thereby ordered an investigation as requested in its Docket No. 30140. A certified copy of said Order of Investigation is a part of the Record accompanying this complaint.

17. On May 12, 1949 the Interstate Commerce Commission assigned said Docket No. 30140 for hearing on June 14, 1949 but on May 27, 1949 said docket was reassigned for hearing on June 28, 1949.

18. Pursuant to said Order of Investigation and Reassignment of Hearing a hearing was conducted, commencing June 28, 1950. A certified copy of the complete Transcript of Hearing and all exhibits received in evidence at said hearing are a part of the Record accompanying this complaint.

18.1 The railroads requested at said hearing that said Order of Investigation be amended to exclude "road aggregates" from said proceeding and such amendment was allowed. (Tr. 20, 21).

18.2 The Florida East Coast Railway Company requested at said hearing that its rates on fertilizer and fertilizer materials applicable between points on its line be excluded from said proceeding on the ground that a further increase in its rates on fertilizer and fertilizer materials would cause a diversion of that traffic and such request was granted (Tr. 20, 21).

19. Thereafter, on May 4, 1950, the Report of the Interstate Commerce Commission was decided. Said Report is attached hereto as Exhibit A and a certified copy thereof is a part of the Record accompanying this complaint. The primary findings and requirement contained in said Report and decision in I.C.C. Docket No. 30140 (I. & S. No. 5646 is not involved in this action) are:

19.1 That intrastate rates and charges should be established between points in Florida that will reflect the same [fol. 9] increases maintained on like interstate traffic to, from and within Florida under the authorizations of the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166;

19.2 That the transportation conditions incident to the

intrastate transportation of freight in Florida are not more favorable and such conditions in the Florida peninsular are somewhat less favorable than those within Southern Territory and between Florida and interstate points;

19.3 That the present interstate freight rates within Florida and between points in Florida and points in other states are just and reasonable and the intrastate rates and charges approved in said Report will not exceed a just and reasonable level;

19.4 That there is an active competition between localities engaged in interstate commerce between points in Florida and points in other southern states, on the one hand, and localities engaged in intrastate commerce in Florida on the other hand, and this competition extends for all practical purposes throughout the entire State of Florida and to class and commodity traffic generally;

19.5. That the Florida intrastate rates and charges which are below the level authorized by said Report are abnormally low and are not contributing their fair share to the revenue required by the railroads to enable them to render adequate and efficient service and to operate profitably, and thereby accomplish the purpose of the Interstate Commerce Act as set forth in the national transportation policy declared by Congress to develop and preserve a national transportation system adequate to meet the needs of the commerce of the United States, of the postal service and of the national defense; and that the burden thus cast upon interstate commerce is undue to the extent that said intrastate rates and charges are less than they would be on the basis approved in said Report;

19.6 That the establishment of the intrastate rates and charges increased sufficiently to equal the level approved [fol. 10] in said Report will substantially increase the revenue of the railroads therefrom and will constitute not more than a fair proportion of said railroads' total income, not taking into consideration the increases granted by the Interstate Commerce Commission in its Docket Ex Parte 168; (I.C.C. Docket Ex Parte 168 is not involved in this action.)

19.7 That the maintenance of intrastate rates and charges within Florida on bases lower than those approved in said Report causes unjust discrimination against interstate com-

merce in all instances, undue preference of and advantage to localities in intrastate commerce and undue prejudice to localities in interstate commerce in nearly all instances, and undue and unreasonable advantage and preference to intrastate shippers of cement;

19.8 That such unjust discrimination and undue prejudice should be removed by establishing intrastate rates and charges approved in said Report as aforesaid;

19.9 That unless the Florida Commission notified the Interstate Commerce Commission within 30 days from the date of service of said Report that the Florida Commission would permit promptly the increases approved in said Report, the Interstate Commerce Commission would enter an order carrying into effect said findings.

20. Under date of June 19, 1950 the Florida Commission filed with the Interstate Commerce Commission its Petition for Rehearing. A certified copy of said Petition is a part of the Record accompanying this complaint.

21. At a General Session on July 25, 1950 the Interstate Commerce Commission entered its Order denying said Petition for Rehearing. A certified copy of said Order is a part of the Record accompanying this complaint.

22. The Interstate Commerce Commission entered its Final Order in its Docket No. 30140 at a General Session on [fol. 11] July 25, 1950 and therein made the aforesaid Report and decision of said Commission, decided May 4, 1950, a part of said Final Order. Said Final Order noted the failure of the Florida Commission to notify the Interstate Commerce Commission that the Florida Commission would permit the increases approved in said Report in accordance with the requirement of said Report as aforesaid, and ordered the railroads (respondents in said proceeding) to cease and desist, on or before September 28, 1950, and thereafter to abstain from practicing the unjust discrimination and the undue preference and advantage found in said Report to exist, and further ordered said railroads to establish, on or before September 28, 1950, upon 30 days notice, and thereafter to maintain and apply for the intrastate transportation of freight from and to points in the State of Florida freight rates and charges no lower than the rates and charges, or on the rate bases, approved in said Report. A copy of said Final Order is attached

hereto as Exhibit B and a certified copy thereof is a part of the Record accompanying this complaint.

Final Order and Report Are Illegal and Invalid

23. Plaintiffs allege that the aforesaid Final Order of the Interstate Commerce Commission and the Report made a part thereof in I. C. C. Docket No. 30140 are illegal and invalid for the following reasons:

23.1. That said Commission acted arbitrarily, unreasonably and unlawfully in authorizing increases in intrastate freight rates and charges as approved in said Final Order and Report, in that the evidence adduced at the hearing in said Docket No. 30140 shows that the railroads were earning a fair and reasonable return from the operation of their intrastate freight service in Florida;

[fol. 12] 23.2 That such evidence reveals that in 1948 the three major railroads operating in Florida and doing approximately ninety per cent of the railroad business in Florida, namely: Atlantic Coast Line Railroad Company, Seaboard Air Line Railroad Company and Florida East Coast Railway Company, earned in excess of forty million dollars from their freight operations alone and that their passenger deficits were twenty million dollars, thus disclosing that fifty cents out of every dollar earned by said railroads was siphoned off to make up for passenger losses; that such evidence shows that any alleged revenue needs of the railroads were not occasioned by the operation of their freight service but were caused by deficits in the operation of their passenger service; therefore said Commission acted arbitrarily, unreasonably and unlawfully in authorizing the increases in intrastate freight rates and charges approved in said Final Order and Report in that said increases will impose on Florida intrastate shippers of goods deficits incurred by the railroads in the operation of their passenger service and will result in placing on said shippers excessive charges in order to supply an adequate return for the entire service of the railroads;

23.3 That said Commission acted contrary to law and arbitrarily and unreasonably in authorizing the increases in intrastate freight rates and charges approved in said

Final Order and Report and thereby changing the intrastate freight rates and charges previously approved by the Florida Commission, in that before invading the state field and changing intrastate rates in the interest of the revenue of the railroads it was necessary that the Interstate Commerce Commission make findings, supported by evidence, as to the revenue which has been derived by the railroads from the traffic in question, the revenue which can be expected under the increased rates, and that the alteration of the intrastate rates will produce, or is likely to produce, income necessary to prevent an undue burden upon the [fol. 13] interstate revenues of the railroads and to maintain an adequate transportation service, and the Interstate Commerce Commission failed to make such findings in said Final Order and Report and cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.4 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, as to what contribution from intrastate traffic would constitute a fair proportion of the railroads' total income, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.5 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, as to what amount of revenue was required to enable the railroads to operate efficiently, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.6 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, that the present intrastate freight rates and charges in Florida are less than compensatory or insufficient to cover the full cost of service, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

23.7 That said Commission acted unlawfully and arbitrarily and unreasonably in failing to make findings, supported by evidence, that maintenance of the increased intrastate freight rates and charges approved in said Final

Order and Report is necessary to the operation of a nationally efficient and adequate transportation system, and said Commission cannot make such findings as there is no evidence in the record of said hearing to support such findings.

[fol. 14] 23.8 That the general finding (finding No. 7 of said Report) that the present Florida freight rates and charges cause unjust discrimination against interstate commerce in all instances is unlawful and arbitrary and unreasonable in that the same is contrary to the evidence in the record of said hearing and there is no evidence in said record to support such finding; that said finding as to alleged unjust discrimination is unlawful and arbitrary and unreasonable because said finding cannot be made lawfully unless and until said Commission makes the findings, supported by evidence, described in paragraphs numbered 23.3 to 23.7, inclusive, hereof.

23.9 That the general finding (finding No. 7 in said Report) that the present Florida intrastate freight rates and charges cause undue preference of and advantage to persons and localities in intrastate commerce and undue prejudice to persons and localities in interstate commerce in nearly all instances is contrary to the evidence in the record of said hearing and there is no evidence in said record to support such finding; that said finding fails to identify and name the persons and localities who are the beneficiaries of such alleged preference and advantage or the persons or localities who are the victims of such alleged undue prejudice, and said Commission cannot make a finding identifying and naming such persons and localities as there is no evidence in said record upon which such a finding can be predicated.

23.10 That all of the findings of said Final Order and Report (findings No. 1 to 8, inclusive, of said Report) are contrary to the evidence in the record of said hearing and there is no evidence in said record to support such findings, or any of them.

23.11 That the conclusion that the cost of train operations [fol. 15] was higher on intrastate than on interstate traffic in Florida (sheet 33 of said Report) is contrary to, and is not supported by the evidence in the record of said hearing and, therefore, is unlawful and arbitrary and unreasonable;

that the evidence on which said conclusion is supposedly founded consists principally of an analysis made by the railroads which is shown by the evidence to be unreliable in that said analysis covers a period of one week only, which is not shown to be representative and covers only five trains, which are not shown to be typical (Tr. 26), and in that the correctness of said analysis depends primarily upon the classification of freight cars between intrastate and interstate movement, and such classification is based entirely on conductors' wheel reports in which all cars are classified as intrastate if their movement was wholly within Florida, as such conductors' reports consider only the origin and destination of the car itself without regard to the lading (Tr. 47); that in their testimony the witnesses of the railroads classified as intrastate cars all empty refrigerator cars moving south from Jacksonville, Florida in the face of the fact that there is no intrastate movement of loaded refrigerator cars in Florida (Tr. 36) and the further fact that in fixing rates on fresh fruits and vegetables moving in interstate commerce the Interstate Commerce Commission has always taken into consideration the return movement of empty cars and compensated for such return movement at the interstate rate; that said witnesses also classified as intrastate cars all cars moving from the phosphate mines to Tampa, Florida for transshipment by water despite the fact that such train movement of phosphate is under interstate lading and interstate rates (Tr. 712).

23.12 The action of said Commission in finding (finding No. 1 of said Report) that transportation conditions in the [fol. 16] intrastate transportation of freight in Florida are not more favorable and that such conditions are somewhat less favorable than those within Southern Territory and between Florida and interstate points is unlawful and arbitrary and unreasonable in that the railroads failed to carry the burden upon them to make a definite showing as to the relative transportation conditions affecting intrastate as well as interstate commerce, and such finding is not supported by the evidence.

23.13 The action of said Commission was arbitrary and unreasonable and contrary to law in failing to take into consideration that further increases in intrastate freight

rates and charges will divert traffic from the railroads and in some instances will result in a decrease rather than an increase in the revenue of the railroads.

23.14 Said Commission acted without authority of law and aribitrarily and unreasonably in authorizing the increases in intrastate freight rates and charges approved in said Final Order and Report in that such increases are not warranted as it is apparent from a consideration of the record in said hearing that said Commission approved such increases upon the mere existence of a disparity between the intrastate rates and charges as approved by the Florida Commission and the interstate rates and charges as previously approved by the Interstate Commerce Commission in its Dockets Ex Parte 162 and 166 as aforesaid.

23.15 The entry of said Final Order and Report is not warranted by the record in said hearing, and is contrary to law, and constitutes an illegal invasion of the powers reserved to the State of Florida and to the people of the State of Florida in violation of the Tenth Amendment of the Constitution of the United States.

[fol. 17] Irreparable Injury

24. Plaintiffs allege that by virtue of the jurisdiction and power vested in the Florida Railroad and Public Utilities Commission and the mandatory duty imposed on said Commission by the sovereign State of Florida acting through the Legislature of the State of Florida, to make reasonable and just rates of freight tariffs to be observed by all railroads, railroad companies and common carriers doing business in Florida over their respective lines, said Commission entered orders prescribing reasonable and just rates and charges on the intrastate transportation of freight in Florida as aforesaid; that in the event the increased freight rates and charges by the Interstate Commerce Commission in said Final Order and Report are permitted to become effective and the operation and enforcement of said Final Order are not restrained and enjoined, plaintiff will be divested of their statutory jurisdiction and power to make reasonable and just rates and charges on the intrastate transportation of freight in Florida and will be precluded from exercising their statutory right and obligation to make

such rates and charges, and thereby plaintiffs, the State of Florida and the people and citizens of Florida will suffer immediate and irreparable injury and loss.

24.1 Plaintiffs allege that by the aforesaid Final Order and Report the Interstate Commerce Commission has approved intrastate rates and charges which will increase the rates and charges on intrastate freight in Florida by an estimated $915,325.00 per annum, (sheet 7 of said Report); that under said Final Order the railroads are ordered and required to establish, on or before September 28, 1950, upon 30 days notice, and thereafter to maintain and apply to the intrastate transportation of freight in Florida the increases approved in said Final Order and Report; that on August [fol. 18] 23, 1950, in keeping with said requirement of said Final Order, the Atlanta & Saint Andrews Bay Railway Company issued Supplement 6 to its Florida Local Tariff No. 11 and on the same date established and gave notice of increases in intrastate freight rates and charges in Florida on the items embraced in said tariff and such increases will become effective on September 28, 1950 and thereafter the intrastate shippers of said items on the lines of said railroad in Florida will be subject to such increases in freight rates and charges, and such increases will be imposed on the people and citizens of Florida, unless restrained by order of this Court before September 28, 1950; that subsequent to August 23, 1950 all of the railroads operating in Florida subject to the provisions of said Final Order in accordance with the aforesaid requirement of said Final Order, have issued supplements to numerous and various existing tariffs of said railroads on their intrastate traffic in Florida and established and given notice of increases in intrastate freight rates and charges in Florida on the items covered by such tariffs and such increases will become effective on September 28, 1950 and thereafter the intrastate shippers of said items on the lines of said railroads in Florida will be subject to such increases in freight rates and charges, and such increases will be imposed on the people and citizens of Florida, unless restrained by order of this Court before September 28, 1950; that pursuant to the aforesaid requirement of said Final Order said railroads will continue to establish and give notice of increases in intrastate freight rates and charges on numer-

ous and various items in addition to those items covered by the aforesaid tariffs and said increases will become effective as provided by said Final Order and thereafter the intrastate shippers of such freight on the lines of said railroads in Florida will be subject to such increases in freight rates and charges, and such increases will be im-
[fol. 19] posed on the people and citizens of Florida, unless restrained by order of this Court before the same become effective; that if the intrastate freight rates and charges prescribed and ordered by the Florida Commission as aforesaid are increased under said Final Order of the Interstate Commerce Commission and said Final Order should hereafter be set aside and annuled, restitution to each shipper for each shipment made under such increases would be practically impossible and the people and citizens of Florida upon whom such increases ultimately will be imposed in consequence of such shipments will have no remedy or right of action to seek recovery of the sums exacted from them by reason of such increases; that said shippers and the people and citizens of Florida could not be adequately compensated for or redressed by any action or actions and if such increases are permitted to become effective said shippers and the people and citizens of Florida will suffer irreparable injury and loss.

24.2 Plaintiffs allege that by virtue of the jurisdiction and power vested in them and the duty imposed on them as aforesaid, and in the interest of and as representatives of the State of Florida and the people and citizens of Florida, they instituted this suit for the purpose, among others, of protecting and upholding such jurisdiction, power and duty as aforesaid and that immediate and irreparable injury and loss to plaintiffs, the State of Florida, the people and citizens of Florida and the shippers of intrastate freight in Florida will result from the establishment and maintenance of the increases in intrastate freight rates and charges approved in said Final Order of the Interstate Commerce Commission unless plaintiffs are granted an order temporarily restraining the operation and enforcement of said Final Order, and that such injury and loss will result before notice can be served on defendant and a hearing had on the application for a temporary restraining order.

[fol. 20] 24.3 Plaintiffs, said shippers and the people and citizens of Florida have no plain, adequate and complete remedy at law available to them in the premises, and plaintiffs aver that by reason thereof and the matters hereinbefore alleged it is necessary for the protection of the rights of plaintiffs, the shippers of intrastate freight in Florida and the people and citizens of Florida that pending the determination of this action plaintiffs be granted a temporary restraining order, without notice, and a temporary injunction, as hereinafter prayed for, restraining and enjoining the operation and enforcement of the aforesaid Final Order of the Interstate Commerce Commission.

Wherefore, Plaintiffs Pray:

1. That this action be heard by a three-judge court as provided and required by Title 28, United States Code, Section 2284;

2. That defendant, its officers, employees, agents and its agency, the Interstate Commerce Commission, including the commissioners of said Commission, be temporarily restrained from enforcing the aforesaid Final Order of the Interstate Commerce Commission dated July 25, 1950, and that the operation of said Final Order be temporarily restrained, until the hearing and determination of the application for a temporary injunction as hereinafter prayed for;

3. That, after hearing, defendant, its officers, employees, agents and its agency, the Interstate Commerce Commission, including the commissioners of said Commission, be temporarily enjoined from enforcing said Final Order dated July 25, 1950 and that the operation of said Final Order be temporarily enjoined, pending final hearing and a determination of this action;

[fols. 21-22] 4. That upon final hearing the Court will enter an order and decree setting aside and annuling said Final Order dated July 25, 1950 and permanently enjoining defendant, its officers, employees, agents and its agency, the Interstate Commerce Commission, including the commissioners of said Commission, from enforcing said Final Order and permanently enjoining the operation of said Final Order;

5. Such other and further relief as is equitable and just.

(S.) Lewis W. Petteway, Guyte P. McCord, Jr., D. Fred McMullen, 700 South Adams Street, Tallahassee, Florida, Counsel for Plaintiffs.

Duly sworn to by Fred Pettijohn. Jurat omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed November 20, 1950

Now comes the United States of America, defendant, and for answer to the complaint filed herein, admits, denies, and avers as follows:

1. Admits the allegations of fact in paragraphs 1 through 8 and alleges that the documents referred to in paragraphs 7 and 8 do not constitute the entire record, nor all of the material record which was before and considered by the Commission. Avers that the entire material record is contained in Docket No. 30140, Volumes 1, A 2, 3, 4 and 5 and that attack on the action of the Commission based on substantiality of evidence to support findings requires submission to and consideration by the court of all of the record upon which the Commission's action is based; and that all of said record has not been filed by plaintiffs herein as is incumbent on them. Further answering, respectfully refers the court to the entire record before the Commission for a complete and accurate account of the proceedings there had.

[fol. 24] 2. Admits the allegations of fact in paragraphs 9 and 10, but respectfully refers the court to that part of the official record before the Interstate Commerce Commission there referred to for a complete and accurate statement of their contents:

3. Admits the allegations of fact, but none of the inferences or conclusions, in paragraphs 11 through 15. Further answering, alleges that in accordance with the final order of the Interstate Commerce Commission of July 15, 1950, the

carriers filed tariffs effective September 28, 1950, but that the increases in intra-state rates and charges therein with respect to wastewoods and sugar cane moving to the mills have been deferred by Interstate Commerce Commission orders dated September 27, 1950, and October 12, 1950, in a proceeding entitled "Investigation and Suspension Docket No. 5850, Sugar Cane — Wastewood in Florida (Intrastate)", until the further consideration and decision of the Commission.

4. Answering paragraphs 16 through 22, respectfully refers the court to the record of the proceedings before the Interstate Commerce Commission for a complete and accurate statement of their contents, and denies all facts, inferences or conclusions of fact inconsistent with or contrary to those in said record before the Commission or found by it.

5. Denies that the final order of the Commission and its report are illegal or invalid for the reasons or any of them referred to or alleged in paragraph 23, or for any other reason; denies that plaintiffs, or any other persons, have or will suffer any irreparable or any legal injury, as alleged or referred to in paragraph 24, by reason of the action of the Commission challenged herein. Avers that protection against any loss, damage or injury, pending final decision in this suit concerning the validity of the Commission's action challenged herein has been obtained through stipulation of the parties filed herein and approved by the district judge on September 26, 1950, and that no restraining order or interlocutory injunction has ever been or is now appropriate. [fols. 25-26] 6. Further answering, denies all allegations or parts of allegations not specifically answered herein, and avers that the proceedings before the Commission were conducted in all respects in accordance with law, that the Commission has not exceeded its statutory power, that the findings made are adequate, that substantial evidence of record supports the findings, and that the report and order made by the Commission are not invalid for the reasons alleged in the complaint, or for any other reason, but are in all respects valid

Wherefore, having fully answered, the United States of America prays that the relief prayed for in the complaint

be denied and the complaint be dismissed with costs to the plaintiffs, and that it have such other and further orders and decrees as may be just and proper.

John F. Baecher, Special Assistant to the Attorney General, Department of Justice, Washington, D. C.; Wm. Amory Underhill, Acting Assistant Attorney General; James E. Kilday, Special Assistant to the Attorney General; George Earl Hoffman, United States Attorney, Attorneys for The United States of America, Defendant.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF THE INTERSTATE COMMERCE COMMISSION—Filed October 20, 1950

The Interstate Commerce Commission, hereinafter called the Commission, one of the defendants in the above-entitled action, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the plaintiffs' complaint contained, for answer thereunto or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering the allegations of paragraphs 1 to 7, inclusive, of the complaint, in so far as answer is deemed material, the Commission admits that this Court has jurisdiction of the action and venue of the parties thereto, that the Florida Railroad and Public Utilities Commission is the agency of the State of Florida empowered by that State to determine the reasonableness of intrastate rail rates, and that the [fol. 28] Interstate Commerce Commission is an agency of the United States charged with the responsibility of administering the provisions of the Interstate Commerce Act,

49 U. S. C., notes preceding and Sections 1, 301, and 901, et seq.

II

Answering paragraph 8 of the complaint, the Commission admits that the official documents described in said paragraph constitute a part of the Commission record, but does not constitute the entire record before and considered by the Commission, which is contained in Docket No. 30140, Volumes 1, 1A, 2, 3, 4 and 5, and the Commission denies that the parts of the record referred to in said paragraph of the complaint is all of said record that is material to the determination of issues presented in this action, and that such parts constitute or may legally be considered as the entire record involved in this action.

III

The Commission admits the allegations of paragraph 9 of the complaint, and alleges that under the order entered December 5, 1946, in the proceeding Ex Parte No. 162, basic freight rates and charges of the petitioning rail carriers, practically all of them, were increased by twenty per cent with certain exceptions in the report in 266 I.C.C. 537.

IV

The Commission admits the allegations of paragraph 10 of the complaint, with the qualification that basic freight rates and charges of rail carriers were increased by the order entered July 27, 1948, in the proceeding Ex Parte No. 166 by percentages differing for described territories, that here concerned, within the southern territory and interterritorially between southern and eastern territory, by twenty-five per cent.

[fol. 29]

V

Answering the allegations of paragraphs 11, 12, 12.1, 12.2, 13, 13.1, 13.2, 14 and 15 of the complaint, the Commission admits that the proceedings, findings, and decisions of the Florida Commission were as stated therein, which findings and decisions in effect approved increases in the intrastate rates and charges equal in percentages to those

approved by the Interstate Commerce Commission, for increases in interstate rates and charges under the Ex Parte 162 and 166 proceedings, with the exceptions stated in the complaint paragraphs 12.1 and 13.1, and that included in such exceptions the Florida Commission authorized and permitted no increases on (c) wastewoods, such as stumps, knots and limbs, and (d) sugar cane moving to the mills. The Commission further alleges that the order of July 25, 1950, required the rail carriers concerned to establish and maintain, on or before September 28, 1950, rates and charges on Florida intrastate freight transportation no lower than the rates and charges approved in the report of May 4, 1950, in accordance with which said carriers filed their tariffs, effective September 28, 1950, increasing said intrastate rates and charges, and of which the schedules relating to the commodities above described in (c) and (d) have been suspended, by order entered September 27, 1950, with corrected order dated October 12, 1950, in the proceeding entitled "Investigation and Suspension Docket No. 5850, Sugar Cane—Wastewood in Florida (Intrastate), which in effect suspends and removes the requirement under the order of July 25, 1950, that the rail carriers increase the intrastate rates on these commodities until the further consideration and decision of the Commission in the I. & S. No. 5850 proceeding.

VI

Answering allegations of paragraphs 24, 24.1, 24.2 and 24.3, the Commission denies that the State of Florida, [fol. 30] interstate shippers in said State, or anyone affected by the Commission orders entered in the proceeding No. 30140, and more particularly the order entered on July 25, 1950, Exhibit B to the Complaint, will suffer any damage or injury by reason of said orders, and alleges that any such damage or injury resulting or occasioned by said orders, which is not admitted, will be caused by application and operation of laws of the United States, particularly by reasons of the provisions of Section 13 of the Interstate Commerce Act, 49 U.S.C. 13, and that protection against any such loss, damage or injury, pending final decision of this action, without a restraining order

or interlocutory injunction by this Court, has been provided for under the stipulation of parties filed, and the order of the District Court Judge entered herein on September 26, 1950.

VII

Answering the further allegations of the complaint herein, the Commission alleges that the proceeding here involved was instituted upon the filing of a petition by the Atlanta & St. Andrews Bay Railway Company, Atlantic Coast Line Railroad Company, Florida East Coast Railroad Company (Scott M. Loftin and John W. Martin, trustees), Georgia & Florida Railroad (W. V. Griffin and H. W. Purvis, trustees), Georgia Southern and Florida Railway Company, Louisville and Nashville Railroad Company, St. Louis-San Francisco Railway Company, and Seaboard Air Line Railroad Company, filed December 3, 1948, seeking to have the general increases in basic interstate rates and charges, as ordered in Ex Parte No. 162 and 166 applied as increases to the basic intrastrate rail carrier rates and charges in the State of Florida, with certain exceptions as stated in the Commission report of May 4, 1950, under the provisions of Section 13 of the Interstate Commerce Act, 49 U.S.C. 13; that a hearing upon said [fol. 31] petition was ordered and was held at Daytona Beach, Florida, on June 28, 1949, with a proposed Examiner's report served January 18, 1950, to which numerous exceptions were filed by various parties including plaintiff, Florida Commission, and many of the shippers intervening herein; that numerous briefs were filed after service of the Examiner's proposed report, including that of plaintiff Florida Commission and a number of shippers intervening herein, and oral argument of counsel for petitioning carriers, the State of Florida, and for several shippers, was heard by the Commission on April 11, 1950, and the Commission report here involved was entered on May 4, 1950, wherein it was found that (1) transportation conditions in Florida are less favorable than in southern territory and between Florida and interstate points, (2) that interstate rates and charges within and between Florida and points in other states, including those found just and reasonable under Investigation and Suspension

No. 5646, to extent decided in said reports, are just and reasonable, and the intrastate rates and charges approved in said report will not exceed a just and reasonable level, (3) that there is active competition between localities in Florida and points in other states in respect to intrastate and interstate, practically extending throughout Florida and to class and commodity traffic generally, not including however sugar cane to mills, molasses, and for short hauls fertilizer and a few other commodities, (4) that Florida intrastate rates and charges below the level authorized in the report, are abnormally low, do not contribute a fair share of revenues required by the carriers to render adequate and efficient service and to operate profitably as contemplated by the Interstate Commerce Act, resulting in a burden upon interstate commerce to the extent that the intrastate rates and charges are less than they would be as approved in said report, (5) that maintenance of [fol. 32] lower Florida rates and charges than approved by said report would cause in future an unjust discrimination against interstate commerce, undue preference and advantage to localities in intrastate commerce, and undue prejudice to localities in interstate commerce, undue preference and advantage to shippers of cement, particularly those at Tampa, and undue prejudice to interstate shippers, especially those at Clinchfield, Ga., and (6) that the unjust discrimination and undue prejudice should be removed by establishing intrastate rates and charges between points in Florida, which will reflect the same increases as are, and for the future may be, maintained on like interstate traffic to and from Florida and within Florida under the authorizations in the Commission Ex Parte 162 and 166 proceedings, modified as indicated in said report and as proposed before the Florida Commission in proceedings above referred to, and with the provisions as to sugar cane, wastewood, pulpwood, and fertilizer and fertilizer materials, as stated in the findings and conclusions of said report; that the report stated an order would be issued, carrying the report findings into effect, unless notified by the Florida Commission within 30 days after service of the report; that it would promptly permit the increases approved in the said report; that following service of this report various parties in interest filed petitions for recon-

sideration, including plaintiff Florida Commission and a number of the shippers intervening herein, to which the rail carriers replied, and the Commission denied the petitions for reconsideration by order entered July 25, 1950, and, the Florida Commission not having notified the Interstate Commerce Commission that the increases approved in said report would be permitted as to the intrastate rates and charges, an order was entered July 25, 1950, requiring the rail carriers to establish on or before September 28, 1950, in the manner prescribed, the increased rates and charges as to intrastate traffic as approved in said report [fol. 33] of May 4, 1950; and that the complaint herein was filed on September 18, 1950.

VIII

The Commission further alleges that all the parties to said proceeding were given a full and complete hearing; that the findings and conclusions in said report, entered May 4, 1950, and order entered July 25, 1950, were and are fully supported and justified by the evidence submitted in said proceeding as aforesaid, and that in making said report it considered and weighed carefully, in the light of its own knowledge and experience, each fact, circumstance and condition called to its attention on behalf of the parties to said proceedings by their respective counsel.

The Commission further alleges that said report and order were not made or entered either arbitrarily or unjustly, or without proof or contrary to the relevant evidence, or without evidence to support them; that in making said report and order the Commission did not exceed the authority conferred upon it by law, and the Commission denies each of and all the allegations to the contrary contained in the complaint.

IX

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint, insofar as they conflict either with the allegations herein, or with either the statements or conclusions of fact included in said report and order.

All of which matters and things the Commission is ready

to aver, maintain, and prove as this Honorable Court shall [fol. 34] direct, and hereby prays that said complaint be dismissed.

Interstate Commerce Commission, by (S.) Allen Crenshaw, Assistant Chief Counsel.

(S.) Daniel W. Knowlton, Chief Counsel, Of Counsel.

[fol. 35] In United States District Court

[Title omitted]

Answer of Atlantic Coast Line Railroad Company and Other Railroads Operating in Florida, Intervening Defendants—Filed October 23, 1950

Come now Atlantic Coast Line Railroad Company and other railroads operating in Florida, who are intervening defendants herein, and for answer to the complaint herein filed by the Florida Railroad and Public Utilities Commission say:

These intervening defendants, jointly and severally, hereby adopt the answer herein filed on behalf of the Interstate Commerce Commission as their answer and in the same manner and to the same extent as though each paragraph thereof were herein fully set out.

[fol. 36] Wherefore, having answered, these intervening defendants pray that the complaint herein be dismissed.

(S.) James A. Bistline, Southern Railway Building, 15th & K Streets, N. W., Washington 13, D. C.; (S.) W. A. Northcutt, c/o Louisville & Nashville Railroad Company, Louisville 1, Ky.; (S.) Frank W. Gwathmey, 1110 Shoreham Building, Washington 5, D. C., Attorneys for Intervening Railroad Defendants.

[fol. 37] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DESIGNATING JUDGES TO CONSTITUTE THE THREE-JUDGE COURT—Filed September 21, 1950

The Honorable Dozier A. DeVane, United States District Judge for the Northern District of Florida to whom an application for injunction and other relief has been presented in the above styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I hereby designate the Honorable Leon McCord, United States Circuit Judge, and the Honorable George W. Whitehurst, United States District Judge for Northern and Southern Districts of Florida, to serve with Judge DeVane as members of, and with him to constitute, the said court to hear and determine the action.

Witness my hand this 19th day of September, 1950.

(S.) Joseph C. Hutchenson, Jr., Chief Judge, Fifth Circuit.

(Injunctions—Three-Judge Courts—Designation, 28 U. S. C. A., sec 2284.)

[fol. 38] IN UNITED STATES DISTRICT COURT

Transcript of Final Hearing, May 1, 1951—Filed September 24, 1951

Before: Honorable Leon McCord, Circuit Judge; Honorable Dozier A. DeVane and Honorable George W. Whitehurst, District Judges.

APPEARANCES:

Lewis W. Petteway, D. Fred McCullen, Guyte P. McCord, Jr., Attorneys for Plaintiff;

F. C. Hillyer, M. W. Wells, Frank W. Gwathmey, James A. Bistline, Attorneys for Intervenors;

[fol. 39] John F. Baecher, George Earl Hoffman, Allen Crenshaw, Attorneys for Defendant.

Hattie Bell Love, Official Court Reporter for the Northern District of Florida.

Gentlemen, this is Judge McCord, we have only one case this morning. I will give you one hour to the side, I think that is long enough, and you divide the time up among you as you see fit. We are going to listen, that is what we are going to do, we are seeking the right of it and I feel that way about it, so we will listen to the argument.

Mr. Petteway: May it please the Court, before we get into the argument I would like to proffer on behalf of plaintiffs the record which was made before the Interstate Commerce Commission.

Judge McCord, will you repeat that, I didn't understand you?

Mr. Petteway: On behalf of plaintiffs I would like to offer in evidence in this case the record which was made before the Interstate Commerce Commission.

Judge McCord: There is no objection I conclude?

Attorneys: No objection.

Judge McCord: Let it be received in evidence. Does that complete the record?

[fols. 40-43] Mr. Petteway: That completes the record, Your Honors, and is the record that was made before the Interstate Commerce Commission.

Reporter's Certificate (omitted in printing)

[fol. 44] Before the Interstate Commerce Commission

Docket No. 30140

In the Matter of Increases in Intrastate Rates and Charges Within the State of Florida

Petition on Behalf of Railroads Operating in the State of Florida—December 3, 1948

To the Interstate Commerce Commission:

Your petitioners, common carriers by railroad within the State of Florida listed in Appendix 1 hereto, present this

petition and respectfully represent and show unto the Commission as follows:

I

Petitioners are corporations organized and existing under the laws of the respective states in which they were incorporated, or trustees of the properties of such corporations. Each of the petitioners operates lines of railroad within the State of Florida and each is engaged in the transportation of freight in interstate commerce to, from, and between points in the State of Florida, and is likewise engaged in the transportation of freight in intrastate commerce within [fol. 45] the State of Florida. Each of petitioners is subject to the provisions of the Interstate Commerce Act, as amended.

II

Petitioners show that by a petition filed with the Commission on April 15, 1946, they and substantially all other Class I railroads in the United States sought authority to make certain increases in their rates and charges, averring that substantial increases in operating expenses, a decline in the volume of traffic handled, and an even greater decline in their net revenues had brought about a critical situation imperiling their ability to continue to render the adequate and efficient transportation service required by the public interest.

In their petition, docketed as Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946*, it was stated that the increased operating expenses therein referred to were being, and would continue to be, incurred by the petitioning railroads in the transportation of intrastate as well as interstate traffic, and that petitioners' estimate of the revenue they would derive from the proposed increased rates and charges reflected the application of said rates and charges to both interstate and intrastate traffic (Petition, pp. 14-16).

On April 26, 1946, the Commission issued its order reopening Ex Parte 148, *Increased Railway Rates, Fares and Charges, 1942*, and assigned that proceeding for hearing [fol. 46] with Ex Parte 162, the issue at said hearing being limited solely to the question of what increases should be

allowed as an emergency and temporary measure pending a full hearing in Ex Parte 162. By its report and order of June 20, 1946 (264 I. C. C. 695), the Commission authorized the railroads to make certain emergency and temporary increases in their rates and charges, as fully set out in its report and order. The increases authorized therein were made effective on interstate traffic on July 1, 1946.

After extensive further hearings held in various parts of the country and full argument, the Commission, on December 5, 1946, issued its final report and order in Ex Parte 162 (266 I. C. C. 537). It authorized an increase of 20 per cent in "all basic freight rates and charges of petitioning rail and water carriers," except as otherwise specifically provided. The exceptions are set forth in the findings and in Appendix 1 to the report. The increases authorized were made effective on interstate traffic on January 1, 1947, superseded the emergency and temporary increases previously granted, and are now in effect.

III

Petitioners further show that by petition dated May 2, 1946, they petitioned the Florida Railroad and Public Utilities Commission * to grant them the same increases on [fol. 47] Florida intrastate traffic as they had sought with respect to interstate traffic in their petition to this Commission dated April 15, 1946. A copy of the latter petition was attached to the petition of May 2, 1946. The Florida Commission was also furnished with a copy of the transcript of testimony and argument before this Commission in all the Ex Parte 162 proceedings, and with all the exhibits filed in said proceedings.

The petition of April 15, 1946, to this Commission suggested that "the cooperation of the state commissions be invited, as provided by law" (p. 16). A cooperating committee of State Commissioners sat with this Commission throughout the entire Ex Parte 162 proceedings, a majority of whom "agreed in general with the results reached in the

* Prior to July 1, 1947, the Florida Railroad and Public Utilities Commission was the Florida Railroad Commission.

report and findings of the Commission" (264 I. C. C. 699; 266 I. C. C. 543-544).

The petition of April 15, 1946, the reports of this Commission; and the steps taken by petitioners to keep the Florida Commission and all other state commissions fully advised of the proceedings, make it plain that the increases authorized in Ex Parte 162 were sought and intended for application on both interstate and intrastate traffic.

IV

On June 22, 1946, which was just after this Commission's report and order authorizing the emergency and temporary increases heretofore mentioned, petitioners wrote the Florida Commission, called attention to their petition of May 2, 1946 and to this Commission's decision [fol. 48] (a copy of which was enclosed with their letter), and requested the Florida Commission to grant the same emergency and temporary increases on Florida intrastate traffic that this Commission had granted on interstate traffic. This request was granted without a hearing and petitioners were permitted to make the increases effective July 1, 1946, the same day they became effective on interstate traffic.

On December 7, 1946, which was immediately after this Commission's final report and order in Ex Parte 162, petitioners again wrote the Florida Commission, again called attention to their petition of May 2, 1946, enclosed a copy of this Commission's final report and order dated December 5, 1946, and requested the Florida Commission to authorize the same increases on intrastate traffic within that State that this Commission had authorized on interstate traffic. The petition was assigned for hearing on February 4, 1947, and a hearing was held on that date.

By order dated March 11, 1947, the Florida Commission authorized the same increases on Florida intrastate traffic that this Commission had authorized on interstate traffic, with the following exceptions:

"(2) That no increase shall apply on the following traffic:

"(a) Logs moving to the mills.

"(b) Wet phosphate rock moving from the washer to the drying plant.

"(c) Waste woods such as stumps, knots and limbs [fol. 49] moving to the retorts or recovery plants.

"(d) Sugar cane moving to the mills.

"(3) On pulpwood an increase of 9 per cent on the Ex Parte 123 rates shall apply." *

Petitioners were authorized to make the increases granted effective May 16, 1947, except that by supplemental order dated March 12, 1947, the effective date of the increases granted on road aggregates was postponed to June 16, 1947. A copy of the Florida Commission's order of March 11, 1947, and its supplemental order of March 12, 1947, is attached hereto as Appendix 2.

V

On April 1, 1947, petitioners petitioned the Florida Commission to reopen and reconsider the proceeding mentioned in Paragraph IV hereof, in so far as concerns the exceptions made by its orders of March 11 and March 12, 1947, and to "authorize the full amount of the increases sought by petitioners in respect to said excepted commodities" (p. 13). The Florida Commission set this petition for hearing on April 22, 1947, but the hearing was indefinitely postponed and the petition was denied without a hearing on October 21, 1947. On November 24, 1947, petitioners filed a second petition with the Florida Commission in which they prayed:

[fol. 50] "* * * that the order entered herein, dated October 21, 1947, be vacated and set aside; that their petition of April 1, 1947, be assigned for hearing at the earliest practicable date; and that upon such hearing they be authorized to make increases in rates on the excepted commodities above referred to which shall correspond in all respects with the increases author-

* By order dated May 9, 1947, the Florida Commission permitted an increase of 20 per cent in the rates on pulpwood between points on the Atlanta and St. Andrews Bay Railway.

ized by the Interstate Commerce Commission in its aforesaid report and order in Ex Parte No. 162 for interstate application on said commodities."

The petition of November 24, 1947, was assigned for hearing on January 27, 1948, and a hearing was held on that date. However, no order was issued as the result of this hearing and the petition was reassigned for hearing on June 23, 1948, along with the hearing on petitioners' second supplemental petition for the Ex Parte 166 increases.

VI

Petitioners further show that by a petition dated June 3, 1947, as amended, and by supplemental petitions dated September 5, 1947, and December 3, 1947, they and substantially all other Class I railroads in the United States sought authority from this Commission to make additional increases in their freight rates and charges. The need for additional increases in freight rates and charges was caused by continued increases in employees' wages and in the cost of materials and supplies, and by petitioners' inability to earn sufficient revenue to enable them to continue to provide the [fol. 51] public with adequate and efficient transportation service to meet the needs of commerce, the postal service, and the national defense, as contemplated by Section 15(a) of the Interstate Commerce Act and the National Transportation Policy.

The above-mentioned petitions were docketed as Ex Parte 166, *Increased Freight Rates, 1947*. The original petition of June 3, 1947, of which the amended petitions were parts, contained the following averments and suggestions:

"The increased operating costs hereinbefore mentioned are being and will continue to be incurred in the handling of intrastate, as well as interstate, traffic; and the estimates of increased revenues which Petitioners will receive, as set forth herein, reflect the application of the proposed increases in rates and charges to both interstate and intrastate traffic. It is respectfully suggested, therefore, that the cooperation of the State Commissions be invited, as provided by law, in any

investigation instituted and conducted by the Commission as hereinafter prayed."

VII

After extensive hearings this Commission issued four reports and orders which, in so far as they relate to the rates within southern territory, may be summarized as follows:

Report and order dated October 6, 1947, 269 I. C. C. 33, authorized an interim increase of 10 per cent, with certain exceptions. These increases were made effective October 13, 1947, on interstate traffic.

[fol. 52] Report and order dated December 29, 1947, 270 I. C. C. 81, authorized an interim increase of 20 per cent, with certain exceptions, in interstate freight rates and charges, superseding and including the increases authorized in the order dated October 6, 1947. These increases were made effective January 5, 1948, on interstate traffic.

Report and order dated April 13, 1948, 270 I. C. C. 93, authorized an interim increase of 25 per cent, with certain exceptions, in interstate freight rates and charges, superseding and including the increases authorized in the order dated December 29, 1947. These increases were made effective May 6, 1948, on interstate traffic.

Report and order dated July 27, 1948, 270 I. C. C. 403, superseding the order of April 13, 1948, made permanent the general increases which had been authorized by the order of April 13, 1948, with certain modifications. The increases provided in this order were made effective August 21, 1948, on interstate traffic and are now in effect.

VIII

Petitioners further show that they furnished the Florida Commission with copies of their petition of July 3, 1947, as amended, and also with copies of their supplemental petitions of September 5 and December 3, 1947. They likewise furnished that Commission with copies of the transcript of the testimony and argument before this Com-

mission, and with copies of all exhibits filed in the Ex Parte 166 proceedings.

[fol. 53] A committee of cooperating State Commissioners sat with this Commission during the hearings and argument of Ex Parte 166 and it is stated in the Commission's final report that this committee "authorize us to state that they concur in the foregoing report" (270 I. C. C. 463). The Commission's final report also contains the following statement:

> "Considering the entire record upon this feature of the proceeding, we conclude that the orders heretofore entered, especially when action by the State authorities is finally completed upon the carriers' proposals, meet the emergency needs of the petitioning carriers, as shown by the record, supplemented by examination of the reports and returns which we are privileged to use under the general stipulation."

It is plain that this Commission concluded that the carriers needed substantially the same increases in both their interstate and intrastate rates, and that the increases authorized by this Commission were predicated upon the assumption that the several state commissions would authorize similar increases in intrastate traffic moving within their respective states.

IX

Petitioners further show that on July 25, 1947, they advised the Florida Commission that they would request the same increases on Florida intrastate traffic as this Com- [fol. 54] mission authorized on interstate traffic. Such requests were made following each of the Commission's four decisions in Ex Parte 166, with the following results:

On October 8, 1947, petitioners filed with the Florida Commission a motion for authority to make interim increases in their intrastate rates and charges corresponding with the interstate increases authorized in this Commission's report and order of October 6, 1947. After hearing, this motion was denied on November 10, 1947, upon the ground that "*the petitioning carriers have failed to make any separation of their interstate and intrastate business,*

and there is not sufficient evidence available to this Commission upon which it can make such a separation."

On November 24, 1947, petitioners filed with the Florida Commission a petition requesting it to vacate and set aside its order of November 10, 1947, and to grant the interim increases authorized by this Commission's report and order of October 6, 1947. This petition was assigned for hearing on January 22, 1948. In the meantime, however, this Commission had issued its report and order of December 29, 1947, in Ex Parte 166 authorizing an increase of 20 per cent in lieu of the prior increase of 10 per cent. Consequently, on January 2, 1948, petitioners filed a supplemental petition with the Florida Commission requesting authority to increase their intrastate rates and charges by the amounts authorized in this Commission's report and order of December 29, 1947.

On January 27, 1948, the Florida Commission heard [fol. 55] petitioners' supplemental petition of January 2, 1948, together with their petition of November 24, 1947. By order entered April 9, 1948, that Commission granted the same increases as authorized by this Commission's order of December 29, 1947, with the following exceptions:

> On wastewood, stumps, limbs, branches, etc., moving to Pensacola, Fla., no increase.
>
> On sugar cane from the fields to the mill, no increase.
>
> On fertilizer and fertilizer materials so designated in rate tariffs, no increase.
>
> On road aggregates, which include sand, gravel, limestone, crushed stone and related articles, an increase of 10 per cent, with maximum increase of 30 cents per net ton, in lieu of the sought increase of 20 per cent with maximum increase of 30 cents per net ton.
>
> On class rates and rates made in relation thereto, an increase of 10¼ (ten and one-fourth) per cent in lieu of the sought increase of 20 per cent.

By a subsequent order dated May 12, 1948, the Florida Commission held that it had authorized no increases in the rates on dolomite or ground agricultural limestone.

X

Petitioners further show that on April 23, 1948, which was shortly after this Commission's third report and order in Ex Parte 166, they filed a second supplemental petition with the Florida Commission by which they sought au-
[fol. 56] thority "to make effective at the earliest practicable date increases in freight rates and charges which shall correspond in all respects with the increases authorized by the Interstate Commerce Commission for interstate application in the aforesaid report and order of April 13, 1948, in Ex Parte No. 166, as more fully described in said report (Exhibit A hereto), said increases to be in lieu of increases authorized by this Honorable Commission by its order entered herein on April 9, 1948."

This petition was assigned for hearing on June 23, 1948, together with requests for clarification and interpretation of the Florida Commission's orders of April 9 and May 12, 1948. That Commission also assigned for hearing at the same time petitioner's petition of November 24, 1947, in which they requested that they be granted the full Ex Parte 162 increases on the commodities excepted by the Florida Commission's orders of March 11 and March 12, 1947 (See Paragraphs IV and V, *supra*).

The hearing assigned for June 23, 1948, was held, but before the Florida Commission rendered a decision this Commission issued its final report and order in Ex Parte 166. Consequently, on August 3, 1948, petitioners filed a third supplemental petition with the Florida Commission in which they requested that they be granted the same increases in their Florida intrastate rates and charges that this Commission had granted as to interstate rates and charges in its final report and order in Ex Parte 166. *The petition further stated that petitioners were willing*
[fol. 57] *to submit their request for said increases upon the record already made, and this was done.*

By order dated November 13, 1948, a copy of which is attached hereto as Appendix 3, the Florida Commission:

(a) Refused to authorize petitioners to increase their intrastate rates and charges by the amounts authorized with respect to interstate rates and charges

in this Commission's third and fourth reports and orders in Ex Parte 166.

(b) Refused to modify its order of March 11, 1947, so as to authorize the Ex Parte 162 increases on the commodities excepted from those increases by said order.

(c) Continued in effect only until July 1, 1949, the increases authorized by its order of April 9, 1948.

(d) Continued in effect all the exceptions mentioned in its order of April 9, 1948; that is to say, refused to authorize the Ex Parte 166 increases to be made on the excepted commodities.

(e) Revised the class-rate scales to reflect more nearly the interstate scales as increased under Ex Parte 162 and as increased 20 per cent under Ex Parte 166, but did not fully bring them up to the level of the interstate scales as so increased.

(f) Removed the increase which had been previously authorized by its order of April 9, 1948, on phosphatic sand and clay.

(g) Held that sulphur should be considered a fertilizer or fertilizer material on which no increase was granted by its order of April 9, 1948.

[fol. 58] (h) Required the observance of the maximum "hold downs" (maximum increases) set forth in the carriers' petitions on all commodities for which hold downs were proposed.

(i) Held the record and proceedings open for the further consideration of the Commission and the entry of such further orders as may be appropriate.

XI

Petitioners aver that the interstate freight rates and charges between points in Florida and points in other states as increased under authority of the orders of this Commission in Ex Parte 162 and Ex Parte 166 are not in excess of just and reasonable rates, and that the intrastate rates in Florida, if similarly increased by the amounts authorized in Ex Parte 162 and Ex Parte 166 for interstate application, will not be in excess of just and reasonable maximum rates for intrastate application over the lines of these petitioners within said state; *that there are*

no transportation or other conditions which warrant or justify a level of intrastate rates on petitioners' lines in Florida lower than the level of the interstate rates applicable between points in Florida, on the one hand, and points in other southern states, on the other hand; that the intrastate rates which petitioners are compelled to maintain by reason of the aforementioned orders of the Florida Railroad and Public Utilities Commission are unduly and unreasonably low; and that the maintenance of said rates deprives petitioners of a large amount of revenue, which [fol. 59] *they need immediately, and is contrary to the purposes and provisions of the Interstate Commerce Act, as amended.*

XII

Petitioners aver that the rates and charges which they are required to maintain for intrastate application in Florida, as the result of the refusal of the Florida Railroad and Public Utilities Commission to grant the same increases in their intrastate rates and charges as this Commission granted with respect to the interstate rates and charges to, from and between points in Florida, *cause and will continue to cause undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Florida, on the one hand, and interstate commerce, on the other hand, and undue, unreasonable and unjust discrimination against interstate commerce,* in violation of the Interstate Commerce Act, as amended, particularly Section 13 of said Act.

Petitioners further aver that by reason of the application of the said intrastate rates and charges within the State of Florida they are being deprived, and will continue to be deprived, of a large amount of revenue to which they are rightfully entitled, and which this Commission has held that it is necessary for them to have in order that they may furnish adequate and efficient transportation service, and that this loss in revenue results, and will continue to result, in an undue burden upon and a discrimina- [fol. 60] *tion against interstate commerce and undue preference of intrastate commerce,* in violation of the Interstate Commerce Act, as amended, and particularly Sections 13 and 15(a) thereof.

Wherefore, *your petitioners pray that* this Honorable Commission *institute promptly an investigation with respect to the matters and things herein set forth;* that after due notice has been given to *the State of Florida and the authorities thereof, and after such hearing or hearings as the Commission may direct, an order be entered removing the said violations of law herein complained of and prescribing rates and charges for the transportation of freight moving in intrastate commerce within the State of Florida which shall carry increases in the same measure and to the same degree as authorized by your Commission in its report and order of December 5, 1946,* in Ex Parte 162, *Increased Railway Rates, Fares and Charges, 1946,* 266 I. C. C. 537, and in its report and order of July 27, 1948, in Ex Parte 166, *Increased Freight Rates, 1947,* 270 I. C. C. 403; and that the Commission grant petitioners such other and further relief as may be justified.

Respectfully submitted, W. A. Northcutt, M. G. Roberts, Charles Clark, Frank W. Gwathmey, Chas. P. Reynolds, Attorneys for Petitioners.

Washington, D. C., December 3, 1948.

[fol. 61]

APPENDIX 1

Atlanta & St. Andrews Bay Railway Company
Atlantic Coast Line Railroad Company
Florida East Coast Railway Company (Scott M. Loftin and John W. Martin, Trustees)
Georgia & Florida Railroad (W. V. Griffin and H. W. Purvis, Trustees)
Georgia Southern and Florida Railway Company
Louisville and Nashville Railroad Company
St. Louis-San Francisco Railway Company
Seaboard Air Line Railroad Company

Appendix 2

Before the Railroad Commission of the State of Florida

Order No. 1443

Docket No. 1538

In re: Petition for Authority to Increase Intrastate Rates, Fares and Charges Applicable on Common Carrier Rail Lines Operating Within the State of Florida

Order Granting Petition With Exceptions—March 11, 1947

The Railroad Commission of the State of Florida held a public hearing on the above petition in Tampa, Fla., on Tuesday, February 4, 1947, pursuant to Notice No. 857, dated December 19, 1946.

The following appearances were entered at said hearing: Frank W. Gwathmey on behalf of all railroads operating [fol. 62] in Florida, petitioners herein; R. K. Parsons and J. S. Yeager for Florida East Coast Railway; W. W. Wolford for Seaboard Airline Railway; R. J. Hodgkins for Atlantic Coast Line Railroad; G. L. Barnard for Southern Railway System; M. C. Edwards for Apalachicola and Northern Railroad; William B. Ellard for Atlanta, St. Andrews and Bay Railroad; Thomas E. Grady for Florida Rate Conference and the Greater Miami Traffic Association; W. W. Balkcom for Florida Rate Conference and Tampa Traffic Association; T. C. Maurer for Jacksonville Traffic Bureau, Florida Rate Conference and the National Container Corporation; B. H. Overton for the Florida Rate Conference and St. Petersburg Traffic Bureau; R. J. Healey for the Florida Rate Conference and Broward County Port Authority; B. S. Browder for Pennsylvania Dixie Cement Corporation; John C. Clous for Lehigh Corporation; John B. Oliver for Lone Star Corporation; C. E. Jones for International Paper Corporation; G. R. Gordon for Container Corporation; M. D. Baldbland for Hudson Paper Company; W. H. Backer for Rayonier Corporation; R. Y. Patterson for United States Steel Corporation; J. B. Johnson for Florida Portland Cement Company; J. C. Fokes for Florida

Crushed Stone Company; Frank E. Harrison for Florida State Road Department; Carl Dodson and A. J. Riebe for Newport Industries Corporation; Lewis H. Hill, Jr., for Lewis Transportation Company; Martin Sack for Petroleum Carrier Corporation; and Frank Hobbs for Redwing Carriers, Inc.

[fol. 63] The petitioners in this case seek authority from this Commission to increase their intrastate rates, fares and charges in amounts corresponding with such increases as were allowed the Railroads by the Interstate Commerce Commission in its Docket Ex Parte No. 162 on December 5, 1946, to become effective during that period from January 1, 1947, to February 28, 1947.

At the commencement of said hearing the petitioners requested that the record in I. C. C. Docket Ex Parte No. 162 be considered as a part of the record before the Florida Commission. There being no objections interposed to this request, it was ordered that the record in I. C. C. Docket Ex Parte No. 162 be made a part of the record in this case.

Financial Position of the Railroad Carriers

The objective of the nation's railroads in petitioning the Interstate Commerce Commission last year for substantial increases in their rates, fares and charges was to secure approximately one billion dollars per year in their freight operating revenue. The estimated total operating revenue for the Class I railroads, which transport most of the total rail traffic of the country, was $7,555,000,000 for 1946, of which $5,728,000,000 would come from freight traffic, $1,271,000,000 from passenger traffic and $556,000,000 from all other operating revenue. The total operating expenses for 1946 are estimated at $6,389,000,000; total taxes, without carry-back credits, $640,000,000; net railway operating in-

[fol. 64] crease, without carry-back credit, $373,000,000; and net income, without such credit, $29,000,000. The carry-back tax credits are estimated at $174,000,000. The net railway operating income after taking into account the tax credits is estimated to be $547,000,000, and the net income $203,000,000.

Corresponding figures for the year 1947, on the basis of averaging increases granted by the Interstate Commerce

Commission last year pending final decision in Ex Parte No. 162, would result in a deficit in net income of $225,000,000.

Based upon an estimated increase of one billion in revenue ton miles over 1946, and a decrease of seventeen billion revenue passenger miles, on the basis of their proposed increases in freight rates and charges, it is estimated that the railroads net income will approximate $247,000,000.

Of great importance affecting the financial position of the railroads is the trend of wages and the prices of materials and supplies they must pay. General increases in railroad wages in 1941, 1943 and 1946, amounting on an annual basis to $1,382,000,000, and increases resulting from vacations with pay granted to employes during the same period amounting to $75,000,000 have had the effect of increasing operating costs $1,457,000,000 annually in terms of the actual and anticipated level of employment in 1946. Increased payroll taxes on the increased wages are computed as approximating $82,900,000 per year. An additional pay-
[fol. 65] roll tax of 2.25 per cent went into effect on January 1, 1947, as a result of the Crosser Act, enacted by Congress in 1946. It is estimated that this additional tax will amount to $90,000,000 or more, per year. On the basis of 1946 purchases it is estimated that increased costs in materials and supplies will be $537,000,000 per year. The cumulative effect of the increases for wages, vacations, payroll taxes, materials and supplies, that have occurred in the period from 1939 to 1946, as applied to the 1946 operations, is at the rate of $2,166,920,000 per year.

Petitioners' requested increases are based on the assumption that wages and the prices of materials and supplies in effect August 15, 1946, will continue in effect. Any substantial changes in the prices of these items will materially affect the estimate for 1947 operations.

While the foregoing figures and estimates are for the railroads throughout the country and involve interstate as well as intrastate revenues and expenses, they bear a direct relation to corresponding Florida intrastate revenues and expenses. The three large railroads operating in Florida are the Seaboard Air Line Railroad, the Atlantic Coast Line Railroad and the Florida East Coast Railroad, which

latter road lies wholly within this State. With reference to the Atlantic Coast Line Railroad, its intrastate freight revenue for the entire system produced 13.8 per cent of the road's total revenue in 1946. For the Florida East Coast Railroad; its intrastate revenues provided 18 per cent of [fol. 66] the total revenue for 1946. For the Seaboard Air Line Railroad, intrastate revenues for the entire system amounted to 5 per cent of its total revenue in 1946. 49.8 per cent of the total intrastate revenue for the Atlantic Coast Line for 1946 was produced in Florida. For the Florida East Coast Railroad all of its intrastate revenue was produced in this state. For the Seaboard Air Line Railroad 57.5 per cent of its total intrastate revenue was produced in Florida. Because of the extensive mileage operated in this state by these three large railroads, this Florida intrastate business has a substantial affect on their revenue picture.

Comparing the first eleven months of 1946 with the corresponding eleven months of 1945, the Atlantic Coast Line had an increase in operating costs of $7,766,723; the Seaboard, $5,400,000; the Florida East Coast, $1,200,000; the L. & N., $9,500,000; and the Southern $16,200,000. For the same period the same railroads had decreases in operating revenue as follows: The Atlantic Coast Line, $21,000,000; the Seaboard, $17,700,000; the Florida East Coast, $3,400,000; the L. & N., $26,900,000 and the Southern $34,000,000.

The so-called Crosser Bill, effective January 1, 1947, has already been mentioned. It is estimated by the petitioners that in 1947 this Congressional Act alone will cost the Atlantic Coast Line $1,488,120; the L. & N., $2,275,000; the Seaboard, $1,139,000; and the Southern $2,905,000. In addition, the level of material and supply prices has expanded greatly in the past five or six months, but to a large [fol. 67] extent those price increases have not yet become apparent in railroad cost for the reason that the railroads carry on hand a very heavy inventory of materials and supplies. These items used by the railroads in the latter part of 1946 were largely bought prior to that time at a lower price level. The full effect of these increases will be felt in 1947. For the Atlantic Coast Line alone it is esti-

mated that materials and supplies which they did buy in 1945 would now cost approximately $12,000,000 more than in 1945.

It is estimated by the petitioners that the increases allowed by the Interstate Commerce Commission would not be adequate to cover the increased cost suffered by the railroads in 1946, and now they are faced with enormous increases in 1947 for which nothing has been provided in the I. C. C. increase. They further contend that the request intrastate increases in all of the states, if granted, will not be adequate for their needs during 1947 and that all of their estimates and computations as to 1947 operating revenue are based on the assumption that both the interstate and the intrastate increases would be allowed.

Petitioners show that during the past several years of rapidly increasing wage levels and prices of materials, the railroad freight rate level has had no increases. The last general increase the railroads had in their rates was the Ex Parte 123 ten per cent increase, effective March 28, 1938, other than the temporary Ex Parte 148 increase which averaged less than five per cent and was in effect for only [fol. 68] a short time. On the contrary, since March 28, 1938, many important and substantial reductions have been made in the rate level on interstate traffic, and corresponding reductions contemporaneously made in the intrastate rate level in Florida and other southern states. Many of these reductions were so drastic that if the requested increases are granted the resulting rates will even then approximate only 57.7 per cent of the corresponding rate ten years ago.

Car Loadings and Composition of Traffic

A considerable change in the trend of traffic has been experienced by the railroads since the war years. The result has been something of a loss in tonnage, although that has held up to a certain extent, but the greatest effect, from a revenue standpoint, has been in the change of the character of the traffic and the length of the haul.

Low grade tonnage has replaced, to a considerable extent, high grade tonnage, and the average haul has materially decreased. During the war years the coastwise steamship

service disappeared from the Gulf and from the Atlantic and intercoastally between the Pacific and the Atlantic through the Panama Canal. Import and export traffic, whether for the Government or otherwise, comes in through ports that would not ordinarily have handled that traffic. For example, during the war years the railroads handled great amounts of molasses and syrup, alcohol and alcoholic beverages, manganese ore and vast amounts of sugar [fol. 69] through the ports of Tampa and Jacksonville, or coming through Port Everglades, that came up over the Florida East Coast Railroad to Jacksonville and delivered to its connections there which ordinarily would have moved direct to the north Atlantic ports by water.

During the war years, the railroads participated in the handling of a great amount of goods for the army and for the navy, particularly the army, that went overseas. Such traffic included automobiles, trucks, vast amounts of ammunition and supplies of all sorts for the armed services overseas.

Most of this business has now been lost to the rails and, to a certain extent, has been replaced tonnagewise by low grade traffic which produces less revenue. As a result, while the volume of freight tonnage has held up, the character of the tonnage and the length of the haul has changed to such an extent that the revenues have not held up but have substantially decreased.

Passenger Fares

The petitioning railroads also seek authority to continue in effect, without expiration date, the ten per cent increase in passenger fares allowed in 1942 as a temporary emergency measure, and which, under present authority, expires six months after the legal termination of the war.

The passenger fares applicable generally throughout the country, and presently in effect in Florida, became effective in 1936 and were increased by the aforesaid temporary [fol. 70] increase of ten per cent in 1942. Prior to 1942 coach fares had generally been on the basis of 1.5 cents per mile and they were accordingly brought up to 1.65 cents per mile by the 1942 increase. Later in 1942 these fares were

increased to 2.2 cents per mile on interstate traffic and on intrastate traffic in all but three or four states.

The system wide average revenue per passenger mile of the petitioners has declined substantially since the period following World War I. Since 1936 the average revenue per passenger mile has varied between a low of 1.753 cents in 1941 and a high of 1.916 cents in 1942. In 1945 the average revenue per passenger mile was 1.871 cents. It is estimated that the average revenue per passenger mile in 1947 will be 1.988 cents.

The year 1943 represented the peak of the net revenues received by the railroads for passenger service. Although the gross passenger revenues in 1944 exceeded those in 1943, the net revenues were actually several million less, because the increase in operating expenses was more than the increase in revenue. For the nation's railroads as a whole, the passenger revenues decreased $95,000,000 in 1945, as compared with 1944, but the net revenues from those operations decreased $220,000,000. Due to the nature of passenger services, passenger train-miles cannot be reduced ratably with a decline in passenger traffic. Therefore, a decrease in passenger revenues is reflected in the net revenues to a greater extent than a similar decrease in freight revenues. Too, the railroads cannot expect as favorable a [fol. 71] passenger car load factor in peace time as in war time.

Petitioners estimate that the revenue passenger miles in 1947 will be 26.1 per cent less than in 1946.

The estimated total operating revenue from the passenger service for the nation's railroads for 1947 is $954,000,000. A tentative separation made by the railroads of operating revenues and expenses, estimated for 1947, as between the freight and passenger services, indicates an expected deficit in net railway operating income from passenger service of $445,000,000 in 1947.

Minimum Charges

Petitioners seek authority to increase their minimum charges as follows: Minimum charges per shipment to $1; minimum charges per car to $20; minimum line-haul rates where pick-up and delivery service is afforded to 50 cents.

All other minimum charges where stated as such are proposed to be increased 25 per cent. We are of the opinion that free pick-up or delivery service, or allowance therefor, reasonably should not be given when the line-haul is less than 50 cents per 100 pounds. The proposal to increase minimum rates per car is limited to those provided in Consolidated Freight Classification Rule 13 and corresponding rules in other tariffs.

Position of Interveners With Respect to Proposed Increases

Numerous traffic associations, bureaus and private indus- [fol. 72] tries were represented at the hearing in this case, and several of them presented evidence for the consideration of the Commission. We have considered their various positions and shall briefly summarize the salient contentions of the testimony relating to the particular groups or classes of commodities. There was little, if any, testimony presented tending to deny the necessity for according the petitioners additional revenue. However, some representing particular classes of commodities contend that flat increases are not as fair as uniform percentage increases. Some have taken the position that their particular commodity cannot stand any increase, while others urge that their particular commodity be excepted from the full increase requested.

We will discuss briefly the particular commodities concerning which there appears to be some logical reason for special exceptions.

Products of Agriculture

Under this classification, sugar cane was the only commodity concerning which anyone appeared requesting exceptions from the proposed increases. The movement of sugar cane is entirely an intrastate movement. The 1946-47 crop, which is being harvested at the present time, will consist of approximately 1,012,000 tons moving from loading hoists at the fields to the mill. The industry does all the switching, assembles the train, and furnishes the cars. They own 469 cane cars of 60,000 pounds capacity each. All the carrier has [fol. 73] to do is couple the locomotive to the cars and move them to the mill. The industry pays approximately $474,- 000 freight on the annual crop under presently existing

rates. A ton of sugar cane produces 200 pounds of sugar. Sugar is still under Federal price control. On this traffic the carriers require the outbound haul of the finished product, the raw sugar and black strap molasses, from the mill. On the annual output of raw sugar the industry pays approximately $750,000 in freight for the outbound haul to the industry's refinery in Georgia. The 20 per cent increase already allowed on the interstate traffic applies to the movement of the raw sugar from the mill to the refinery. If the intrastate rates on the movement of the sugar cane from the fields to the mill is likewise increased, the industry will incur a double increase. With the price on sugar stabilized by the Federal government, the industry cannot increase the price on its raw sugar to offset the proposed freight rate increase.

Products of the Forest

Under this category there are three commodities or groups concerning which there appears to be some logical reason for special exceptions growing out of the fact that they are all raw materials moving *out of the fact that they are all raw materials moving* to the mill on which transit rates usually apply, or at least the railroad has the advantage of also moving the finished or manufactured product [fol. 74] from the mill always at a much higher rate than the raw material.

Pulpwood

The first of these is pulpwood. The paper industry pays the freight on pulpwood and was represented at the hearing. They expressed a willingness for intrastate rates to be increased on all commodities shipped and received by them to the same extent as the interstate rates were increased—with the one exception: plupwood. This industry has had two major revenue rate increases during the past several years. These were Ex Parte 123 in 1938 allowing a ten per cent increase on pulpwood; Ex Parte 148 involved a six per cent, and now the present proceeding proposes a twenty per cent, increase.

Since the ten per cent increase in 1938, the Florida mills have been operating at a considerable burden as compared

with those in some of the neighboring Southern States, such as Georgia and Alabama, inasmuch as the Ex Parte 123 ten per cent increase was not allowed in those states.

In order to overcome this resulting burden, and for the purpose of uniformity in rates on pulpwood throughout the South, the paper industry will appear before the Georgia Public Service Commission and other State Commissions supporting a 20 per cent increase in the basic rates of those states where the Ex Parte 123 ten per cent increase was not allowed. If such states permit the requested twenty per cent increase to be applied on their basic rate and Florida [fol. 75] retains both the Ex Parte 123 and Ex Parte 148 increases, it would require an increase of only 3 per cent in Florida to equalize her rates with those of the other states. If Florida eliminates the Ex Parte 148 increases, then it would be necessary to increase the Ex Parte 123 rates by 9% which is the same increase granted already in several of the other Southern States.

Waste Woods

Waste woods are the raw material for the steam distillation process of obtaining naval stores. This raw material consists of about 95 per cent old tree stumps and roots and about 5 per cent of pine knots and limbs. Five pounds of this raw material are required to produce one pound of the finished product. From this source 150 different commodities are produced which move on comparatively high rate levels. Two increases have previously been granted applicable to these waste wood raw materials—a 10 per cent increase in Ex Parte 123 and a 6 per cent increase in Ex Parte 148. The finished products moving from the recovery plants practically all bear the interstate Ex Parte 162 increases so that a corresponding increase on the intrastate movement of raw materials to the retorts, or recovery plants, would result in a double increase to the industry.

Logs

Logs moving to the mills are in much the same situation as pulpwood and waste woods, in that the finished or manu- [fol. 76] factured products moving from the mills to a large extent move in interstate commerce and already carry the

interstate Ex Parte 162 increases and will carry similar intrastate increases as a result of increases granted by this Order. Thus, a corresponding increase on the raw materials (logs) moving to the mills would result in a double increase to the industry.

Products of Mines

Wet Phosphate Rock

Under this category one commodity demands particular consideration. That is wet phosphate rock moving from the washer to the drying plant. A large amount of phosphate is mined in Florida, and is an important element in the manufacture of fertilizer. Wet phosphate rock is shipped into the main plants where it is dried, ground and re-shipped. On the shipment of the outbound materials, the maximum increases already apply under Ex Parte 162 on interstate movements and will apply on intrastate shipments under this Order. Thus, a corresponding increase on the wet phosphate rock would result in a double increase to the industry.

Florida Rate Conference

The Florida Rate Conference is an association of most of the traffic men of the State, representing various sections of the State and various industries. They opposed any further [fol. 77] horizontal increases and expressed the belief that the petitioners' estimates of future net railway operating income are entirely too pessimistic and that the requested increases should not be authorized unless and until it has been conclusively shown that the present rate structure will not yield sufficient revenue to enable the carriers as a whole to render adequate and efficient service. The Conference further took the position that if the Commission concluded that the record in this proceeding justifies an increase in freight rates, then such increases should not be authorized for application in connection with rates (class or commodity) to and from the Florida peninsula, that includes the so-called "Florida arbitraries," except to the extent that such increases as are deemed proper shall be applied only to the base class and commodity rates to and from Florida peninsular points. On cross examination the Conference representative stated that they were essentially deal-

ing with the feature of the Florida arbitraries in this proceeding.

Observations

There are involved in this proceeding all the intrastate freight rates and charges, and all the passenger fares of all the railroads operating in Florida. It is a proceeding of considerable magnitude and complexity. As was stated by the representative of the Florida Rate Conference at the hearing, "in a case of this character involving as it does, divergent views on many salient points, it would be impracticable for the Commission to render a decision entirely [fol. 78] satisfactory to all concerned. Consequently, all that any of us can expect is a decision that will deal fairly with the carriers and, at the same time, one that will not do violence to the fundamental principles underlying the Florida statute." We have attempted to do just that. We have accorded every reasonable opportunity for those in any way affected to be heard, while not unduly delaying the matter because of the urgent need of the carriers for revenue relief. We have given the entire matter very careful study and consideration.

The rails are facing a critical period, and it is our best judgment that they cannot function successfully without materially increased rates. We are convinced that it is in the best interest of the State that the railroads be accorded every opportunity to procure the revenue they need in order that good service may be rendered. No one can say with certainty what revenue will be produced by the increases allowed. If the resulting rates prove unreasonably high, they may later be reduced. Intrastate rates in Florida are the rates of this Commission, always under its jurisdiction for the purpose of proper adjustments.

Findings

From the evidence adduced at said hearing and from a careful consideration of the entire record, we find:

(1) In order that the State of Florida may have an adequate, sustained transportation system for the [fol. 79] benefit and welfare of the public, and in order that freight rates and charges shall be such as to move

the greatest volume of traffic while providing adequate and efficient transportation at the lowest cost; consistent with the furnishing of such service; and, to enable the petitioning carriers to provide that service, it is necessary that there be substantial increases in the basic freight rates and charges of petitioners and the continued maintenance of the present temporarily increased basis of passenger fares and charges.

In said Order No. 1443 the Florida Commission included in its findings, among others, that the basic freight rates and charges increased or continued in effect by said order to the extent therein found and approved in detail would be just and reasonable, but the full amount of the increases in the form proposed in the petition of the railroads has not been shown to be just and reasonable in respects not therein approved.

(3) Except as otherwise specifically provided in these findings, or in the appendix hereto, all basic freight rates and charges of the petitioners should be increased for the future by 20 per cent and, as so increased, will be just and reasonable. By basic freight rates and charges are meant those now in effect—excluding, however, from such freight rates and charges as now in effect such portion thereof as represents the temporary increases previously approved by this Commission corresponding to the inferim increases author- [fol. 80] ized by the Interstate Commerce Commission on June 20, 1946, in its Docket No. Ex Parte 148.

(4) The basic freight rates and charges on the commodities classified in Appendix 1 are increased by the specific percentages or amounts shown therein, and such rates increased as provided therein will be just and reasonable for the future.

(5) The following increases in the basic freight rates and charges for miscellaneous services will be just and reasonable for the future:

Rates and charges on milk and cream in passenger and freight service, including all commodities listed in the applicable basic milk and cream tariffs are increased 15 per cent.

Rates and charges for protective services published in applicable perishable protective tariffs are increased 15 per cent.

Charges for collection on delivery services are increased 25 per cent.

Rates and charges for switching, including intraplant and intraterminal switching, whether or not absorbed by long line-haul carriers are increased 25 per cent.

Where tariffs provide for absorption of charges for switching subject to a stated minimum revenue for a line-haul carrier, such stated minimum shall be increased by the same amount as the charge or charges for switching.

Charges for loading or unloading provided in Section 2 of Consolidated Classification Rule 15 are in- [fol. 81] creased to five cents per one hundred pounds.

Rates and charges for special train, trap and ferry car and crane service and for handling railway equipment on its own wheels are increased 25 per cent.

All commodity freight rates and rates and charges on freight in truck bodies are increased 25 per cent.

Rates and charges for handling commodities (except milk and cream) in baggage or passenger train service, including excess baggage but excluding corpses, are increased 25 per cent.

Except as otherwise herein specifically provided, an increase of 25 per cent is made in the basic rates and charges for accessorial and terminal services such as storage, handling, loading, unloading, reconsignment, diversion, fabrication, other transits, weighing, etc., other than (a) demurrage charges on which no increase is hereby authorized, and (b) charges for handling, loading or unloading export, import, coastwise or intercoastal traffic which do not affect the measure of the line-haul rate and are not in addition to the line-haul rate on which there will be no increase.

Terminal railroads may increase their charges to the railroads for performing the loading and unloading of livestock at public stockyards by 15 per cent, and such increased charges should be absorbed or otherwise paid [fol. 82] by the railroads performing the line-haul

transportation except when they accrue for unloading or reloading enroute at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations.

Minimum charges per shipment are increased to $1, except on single shipments of milk and cream. Minimum charges per car in line-haul service as provided Consolidated Classification Rule 13 and corresponding rules in other tariffs are increased to $20. Minimum line-haul rates where pick-up and delivery services are included are increased to 50 cents.

(6) Where through rates are made by combining separately stated rates (two factor or multiple factor rates), such combination will not be increased separately, except as otherwise provided as to rates on grain and grain products, but a single increase should be applied to the entire through rate.

(7) Fractions should be disposed of as follows: In connection with rates or charges which without the emergency increases of 1946 are approximately 5 cents or lower, resolve fractions to the nearest ¼ cent; rates higher than approximately 5 cents but not higher than approximately 10 cents, resolve fractions to the nearest ½ cent; rates higher than approximately 10 cents, resolve fractions to the nearest whole cent, except on grain and grain products and articles taking the same [fol. 83] rates; in all instances resolve fractions in connection with commodity rates to the nearest ½ cent; when in connection with rates rounded out to ¼ cent, increase to the next higher ¼ cent; and similarly in connection with rates rounded out to ¼ and to whole cents.

(8) The increase in passenger fares authorized by Order of this Commission corresponding to the increases authorized by the Interstate Commerce Commission in Ex Parte No. 148, dated January 21, 1942, as modified therein October 30, 1945, shall be continued in effect without expiration date; and for the future will be just and reasonable.

(9) Where carriers earn specific stated amounts as their compensation or division out of joint through

rates, such amounts should be increased in the same percentages as the joint through rates.

(10) When accessorial charges or switching charges are increased as herein prescribed, and such charges prior to the increase were absorbed wholly or in part by a carrier, the amount of the absorption should be increased in the same proportion as the increase in the accessorial or switching charge.

(11) The increases in freight rates and charges provided for by this Order shall supersede and be in lieu of the emergency increases authorized by this Commission in 1946, corresponding with similar increases authorized by the Interstate Commerce Commission in its [fol. 84] report and order of June 20, 1946, in Docket No. Ex Parte 148.

(12) No increases shall apply on the following traffic:

(a) Logs moving to the mills.

(b) Wet phosphate rock moving from the washer to the drying plant.

(c) Waste woods such as stumps, knots and limbs moving to the retorts or recovery plants.

(d) Sugar cane moving to the mills.

(13) On pulpwood an increase of 9 per cent on the Ex Parte 123 rates shall apply.

(14) The increased rates and charges authorized by this Order shall become effective at 12:01 A.M., Sunday, March 16, 1947, and approximate tariffs shall be filed by petitioners with this Commission.

(15) The record in this proceeding will be held open and this Commission will retain jurisdiction for the purpose of giving consideration to any necessary readjustments or corrections which the circumstances may warrant when brought to our attention in the proper manner.

(16) Appropriate Orders will be entered by this Commission modifying or amending wherever it may be necessary any outstanding Orders of this Commission in order to permit the increases authorized herein to be established and become effective.

Now, therefore, in consideration thereof, it is ordered and adjudged by the Railroad Commission of the State of Florida as follows:

[fol. 85] (1) That the increased freight rates and charges and the passenger fares herein found to be just and reasonable for the future and set out in the appendix hereto be, and the same are, hereby approved and prescribed as the lawful intrastate rates, fares and charges for all railroads operating within the State of Florida, effective at 12:01 A. M., Sunday, March 16, 1947, and appropriate tariffs shall be filed with this Commission showing such increases.

(2) That no increase shall apply on the following traffic:

(a) Logs moving to the mills.

(b) Wet phosphate rock moving from the washer to the drying plant.

(c) Waste woods such as stumps, knots and limbs moving to the retorts or recovery plants.

(d) Sugar cane moving to the mills.

(3) On pulpwood an increase of 9 per cent on the Ex Parte 123 rates shall apply.

(4) All previous applicable Orders of this Commission, wherever necessary, are hereby modified or amended so as to permit the increases herein authorized to become effective as aforesaid.

Done and ordered by the Railroad Commission of the State of Florida, at Tallahassee, Fla., this 11th day of March, 1947.

M. B. Douglass, Chairman.

[fol. 86] Appendix 1.

Basic freight rates, whether class or commodity, and charges, on the commodities hereinafter specified, are increased in the amounts and in the manner set forth as to each commodity class or group. The commodity group numbers (or commodity class numbers) used in this appendix, and throughout the entire Order, for convenience, are those specified in the Order of Division Four of Interstate

Commerce Commission of November 22, 1927, *In the Matter of Freight Commodity Statistics*, which was in effect at the date of the submission herein, although a new list of commodity classes with articles assigned thereto has been promulgated by Order of Interstate Commerce Commission, Division One, September 24 and October 16, 1946, to become effective January 1, 1947. They are intended generally to cover the items customarily included by the carriers in their reports to the Commission under each numbered description, as of the date for the submission.

Products of Agriculture—Groups 10-101, inclusive, and 130-164 inclusive

An increase of 15 per cent is applied for line-haul service on the commodities shown below, in carloads, whether moving on class or commodity rates.

[fol. 87]

Group or Class Number.	*Commodity Description*
10	Wheat.
20	Corn.
30	Oats.
40	Barley and rye.
41	Rice.
42	Grain, n.o.s.
50	Flour, wheat.
51	Meal, corn.
52	Flour and meal, edible, n.o.s.
61	Mill products, n.o.s., not specially prepared for human consumption.
70	Hay and alfalfa.
71	Straw, also rice and flax straw.
80	Tobacco, leaf, unmanufactured.
90	Cotton in bales.
91	Cotton linters, noils, and regins.
100	Cottonseed.
101	Cottonseed meal and cake.
130	Potatoes, other than sweet.
140	Cabbage.
141	Onions.
142	Tomatoes.

Group or Class Number	*Commodity Description*
143	Vegetables, fresh, n.o.s., not cold pack.
150	Beans and peas, dried.
152	Vegetables, dry, n.o.s.
160	Vegetable-oil cake and meal, except cottonseed.
161	Peanuts, in the shell.
162	Flaxseed.
163	Sugar beets.
[fol. 88] 164	Products of agriculture, n.o.s., except the following: Ajowan seed; algarrobilla; almonds; anise seed; arrowroot; beans, cocoa; beans, vanilla; birdseed; bulbs, plant; butternuts; cassia; castor beans; chestnuts; chufas; coconuts, fresh; coffee; copra; ferns, florists' stock; fruit juices, n.o.i.b.n.; fruit trees; grasses, n.o.i.b.n.; hemp (hemp fiber); herbs, n.o.i.b.n.; honey beans (St. Johns bread); istle (istle fiber); ivory nuts (vegetable ivory); jute (jute fiber); licorice root; manila fiber; mushrooms, fresh or dried; mushroom spawn; mustard mushroom spawn; mustard, ground; nursery stock, n.o.i.b.n.; nut meats; nuts, edible, n.o.i.b.n.; nux vomica beans, ground or whole; peanut grits; peel, fruit; pepper (spice); plants, live; plants, n.o.i.b.n.; pulp, fruit; ramie fiber; roots, n.o.i.b.n.; sage; sago; seed, n.o.i.b.n.; shrubbery; sisal fiber; spices; Tahiti beans; Tampico fiber; tea or tea dust; tonka beans; [fol. 89] tow fiber; trees, live, n.o.i.b.n.; vegetable fiber, n.o.i.b.n.; vines; walnuts; and *zacaton* fiber.

Exception: No increases shall apply on sugar cane to the mills.

The increases authorized are applied to each one-factor rate, including proportional and reshipping rates, and to each factor of a multiple-factor through rate, with the understanding that as soon as practicable, the carriers will readjust resulting rates to restore rate relationships and market, gateway, and port equalizations, to adhere to rate-break principles now in effect, such readjustment to reflect an average increase as closely equivalent to a 15 per cent increase in revenue as may be practicable.

Animals and Products—Groups 180-201 inclusive, and 230

An increase of 15 per cent is applied for line-haul service on the commodities shown below, in carloads, whether moving on class or commodity rates.

Group or Class Number	*Commodity Description*
180, 181	Cattle and calves.
190, 191	Sheep and goats.
200, 201	Hogs.
230	Poultry, live.

[fol. 90] Animal or Poultry Feed, N. O. I. B. N., and Starch —Group 701

Whenever these commodities or articles are included in the list of articles taking grain, grain products, or by-products rates, the same increase is applied as for grain and grain products.

Cotton in Bales—Group 90

Subject to a maximum of 10 cents per 100 pounds, applied to the lowest rate with the highest carload minimum weight, and the same increase in cents per 100 pounds applied to the other rates between the same points.

Citrus Fruits, Other Fruits and Vegetables—Groups 110 through 143

Subject to a maximum of 13 cents per 100 pounds.

Wool—Group 260

Subject to a maximum of 20 cents per 100 pounds.

Anthracite Coal, Bituminous Coal, including Lignite, and Coke—Groups 290, 300 and 310

Except on lignite: an increase of 15 cents per net ton or 17 cents per gross ton, as rated, is applied to all basic rates [fol. 91] up to $1 per ton as rated; an increase is applied of 25 cents per net ton or 28 cents per gross ton as rated on basic rates over $1 and not over $2.25 per ton as rated; and an increase of 30 cents per net ton or 34 cents per gross ton as rated is applied on basic rates over $2.25 per ton as rated.

On lignite: an increase of one-half of the amount above authorized is applied to the basic rates stated.

When such commodities are transported by water preceded and followed by rail transportation, or transported by rail at a combination of two separately established rates, the aggregate amount of the two rail factors shall be considered as the rate to be increased as provided in first paragraph under this heading, and be subjected to a single increase as therein authorized.

Iron Ore—Group 320

An increase of 12 cents per ton, gross or net, as rated is applied to all rates.

Alumina and Bauxite Ore and Concentrates—Group 333.
Alumina, n.o.i.b.n.—Group 392

An increase of 12 cents per ton, gross or net, as rated.

[fol. 92] Gravel and Sand—Group 350
Fluxing Stone—Group 392
Stone, Broken, Ground or Crushed—Group 351
Furnace Slag—Group 692
Agricultural or Ground Limestone (In Open Top Cars)—Group 640
Cinders—Group 701

An increase of 15 cents per ton.

Petroleum, Crude—Group 360
Asphalt—Group 370
Tar, Petroleum—Group 453
Tar, Coal, and Tar, n.o.i.b.n.—Group 701

In tank cars, 20 per cent, subject to a maximum of 6 cents per 100 pounds.

Salt—Group 380

Subject to a maximum of $1.20 per ton or 6 cents per 100 pounds.

Phosphate Rock—Group 390

Subject to a maximum of 30 cents per ton.

Exception: No increase shall apply on wet phosphate rock from the washer to the drying plant.

[fol. 93] Sulphur—Group 391

Subject to a maximum of 2 cents per 100 pounds or 40 cents per net ton, subject to the proviso that differentials of water-carrier rates under rail rates as of June 30, 1946, shall be restored without reduction of the water-carrier rates, actual or as herein authorized.

Industrial Sand—Group 392

Subject to a maximum of 30 cents per ton.

Clay or Kaolin, Kyanite Ore—Group 392
Salt Cake (Sodium Sulphate or Sulphate of Sodium)—Group 701

Twenty per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Raw Dolomite—Group 392

Subject to a maximum of 30 cents per ton, when in closed equipment; when in open equipment, the same increase as on fluxing stone.

Bituminous Asphalt Rock, Asphaltic Limestone, Asphaltic Coated Rock, Sand, Gravel, Crude Gypsum and Gypsum Rock, Perlite Rock, Phosphatic Sand and Clay, Ground or Pulverized Limestone in Closed Equipment—Group 392

Subject to a maximum of 30 cents per ton.

[fol. 94] Logs—Group 400

No increase on logs moving to the mills.

Wood (fuel)—Group 402

Maximum 8 cents per 100 pounds.

Pulpwood (fuel)—Group 420

The increase shall be 9 per cent on Ex Parte 123 rate.

Waste Wood (such as stumps, knots and limbs)—Group 443

No increase on traffic moving to the retorts or recovery plants.

Posts, Poles, and Piling, Ties, Railroad Lumber, and Articles taking Lumber rates, Box, Crate and Cooperage Materials Veneer and Build-up Wood—Groups 401, 410, 431 and 432.

Building Woodwork (Mill Work)—Group 697
Wood Pulp, Waste Paper and Rags—Group 701

Twenty per cent; maximum 10 cents per 100 pounds, except that articles in Group 430 which do not take lumber rates, are increased 20 per cent without the maximum limitation.

[fol. 95] Petroleum and Petroleum Products—Groups 450 and 451

In tank cars, 20 per cent, subject to a maximum of 6 cents per 100 pounds.

Vegetable Oils—Groups 460, 461 and 462
Vegetable Oils, n.o.i.b.n.—Group 701
Lard and Lard Oil—Group 222
Lard, Leaf, not rendered—Group 210
Lard substitutes, n.o.i.b.n.—Group 701
Fish Oil—Group 280

Twenty per cent, subject to a maximum of 12 cents per 100 pounds.

Sugar (Beet or Cane)—Group 470

Twenty per cent, subject to a maximum of 10 cents per 100 pounds.

Exception: No increase shall apply on sugar cane to the mills.

Iron, pig—Group 490

Iron and steel, rated 6th class, n.o.s.—Group 491

Rails, fastenings, frogs and switches—Group 500

[fol. 96] Cast iron pipe and fittings—Group 510

Iron and steel pipe and fittings, n.o.s.—Group 511

Iron and steel, Nails and Wire not woven—Group 512

Iron and steel, rated 5th class, n.o.s.—Group 513

Railway car-wheels, axles, and trucks—Group 583

Scrap iron and scrap steel—Group 693

Twenty per cent, subject to a maximum of 10 cents per 100 pounds, but not in excess of $2 per net or gross ton as rated.

Aluminum: Ingot, Pig or Slag—Group 523

Twenty per cent, subject to a maximum of 10 cents per 100 pounds, but not in excess of $2 per net or gross ton as rated.

Aluminum Bars, Castings, Pipe, Sheet Ware and Aluminum Articles, n.o.i.z.n.—Group 701

Twenty per cent, subject to a maximum of 12 cents per 100 pounds, but not in excess of $2.40 per net or gross ton as rated.

[fol. 97] Cement, Natural or Portland, Building—Group 540

Lime—Group 560

Plaster (stucco or wall) and dry Kalsomine—Group 561

Twenty per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Brick and Clay Products, Cement and Concrete Building Blocks—Groups 550, 551 and 552

Twenty per cent, subject to a maximum of 30 cents per net ton, or 1.5 cents per 100 pounds, except as to fire brick

and other refractory clay products, 20 per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Fertilizers, n.o.s., including Potash—Group 640
Diatomaceous or Infusorial Earth—Group 701

Twenty per cent, subject to a maximum of 6 cents per 100 pounds, or $1.20 per net ton.

Canned Food Products, n.o.s.—Group 680

Twenty per cent, subject to a maximum of 13 cents per 100 pounds.

[fol. 98] BEFORE THE RAILROAD COMMISSION OF THE STATE OF FLORIDA

Order No. 1443 (Supplement)

ORDER EXTENDING EFFECTIVE DATE ON INCREASES ALLOWED ON ROAD AGGREGATE—March 12, 1947

By inadvertence there was omitted from original Order No. 1443, Docket No. 1533, provision making increases allowed on Road Aggregate effective at 12:01 A. M., Monday, June 16, 1947, ninety days after its effective date of other increases allowed in said original Order.

The State of Florida, through its Road Department, is engaged in an extensive road construction program; the over-all program amounts to approximately $65,000,000 and a very substantial part of the 1946 construction, though planned for that year, was carried over to 1947, due to the failure of the railroads to provide sufficient cars to move the necessary materials used in this construction program.

A mile of road, taking the standard nine seven-nine type of concrete pavement, requires 1,540 tons of sand, 2,600 tons of gravel or 2,700 tons of crushed stone and 3,900 barrels of cement. It is estimated that the Ex Parte 162 [fol. 99] increases will increase the Highway Department's over-all program of approximately 2 per cent.

The lime rock industry and the State Highway Department contend that neither the industry nor the contractor nor the State should be penalized by immediate increases